



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 8, 2018

Ms. Cynthia Trevino
Counsel for City of Pflugerville
Denton, Navarro, Rocha, Bernal & Zech, P.C.
2500 West William Cannon, Suite 609
Austin, Texas 78745-5320

OR2018-00551

Dear Ms. Trevino:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 690520 (City ID No. W006143).

The City of Pflugerville (the "city"), which you represent, received a request for information used in the hiring of a specified position with the city's police department. The city states it has released some information. The city states it will redact information under sections 552.130(c) and 552.136(c) of the Government Code, and personal e-mail addresses under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).¹ You claim some of the submitted information is excepted from disclosure under section 552.122 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.136 of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *See id.* § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. *See* ORD 684.

Section 552.122 of the Government Code excepts from disclosure “[a] test item developed by a . . . governmental body[.]” Gov’t Code § 522.122(b). In Open Records Decision No. 626 (1994), this office determined that the term “test item” in section 552.122 includes “any standard means by which an individual’s or group’s knowledge or ability in a particular area is evaluated.” ORD 626 at 6. The term “test item” does not encompass evaluations of an employee’s overall job performance or suitability. *See id.* at 8. The question of whether specific information falls within the scope of section 552.122(b) must be determined on a case-by-case basis. *Id.* at 6. Traditionally, this office has applied section 552.122 where release of test items might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976).

You seek to withhold the submitted interview questions and interviewee responses under section 552.122 of the Government Code. You assert the questions at issue are designed to test the knowledge, skills and abilities required for the specified position. You state the city anticipates using the questions at issue for future position vacancies. Further, you state release of the information at issue would compromise the effectiveness of the city’s interview and hiring process. We find, however, the submitted questions evaluate an applicant’s individual abilities, personal opinions, and subjective ability to respond to particular situations, and do not test the specific knowledge of an applicant. Accordingly, the submitted information does not consist of a test item under section 552.122(b), and the city may not withhold it or the corresponding answers on that basis.

We note some of the submitted information may be subject to section 552.117(a)(1) of the Government Code, which excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code.² *See* Gov’t Code § 552.117(a)(1). Section 552.117 is applicable to cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body’s receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body’s receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. In

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

this instance, we are unable to determine whether the individuals whose information is at issue were employed by the city. Therefore, we must rule conditionally. The city must withhold the information we marked under section 552.117(a)(1) if it pertains to applicants who were ultimately hired by the city and who timely requested confidentiality under section 552.024; however, the city may only withhold the cellular telephone numbers marked under section 552.117(a)(1) if the cellular telephone service was not provided to the employees at issue at public expense. To the extent the applicants either were not ultimately hired by the city or did not timely request confidentiality under section 552.024, the city may not withhold their information under section 552.117(a)(1) of the Government Code. The city may also not withhold the marked the cellular telephone numbers on that ground if the cellular telephone service was provided at public expense. As no further exceptions to disclosure have been raised, the city must release the remaining information.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



D. Michelle Case
Assistant Attorney General
Open Records Division

DMC/gw

Ref: ID# 690520

Enc. Submitted documents

c: Requestor
(w/o enclosures)